

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lazer Licenses, LLC)	File Nos. EB-07-LA-111
Licensee of:)	EB-07-LA-112
)	EB-07-LA-113
KSBQ(AM))	
Santa Maria, California)	NAL/Acct. No. 200732900007
Facility ID # 38442)	
)	FRN: 0015079908
KLMM-FM)	
Morro Bay, California)	
Facility ID # 46401)	
)	
KLUN-FM)	
Paso Robles, California)	
Facility ID # 2243)	

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2008

Released: December 19, 2008

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),¹ and Section 1.106 of the Commission’s rules,² we deny a Petition for Reconsideration (“*Petition*”) filed on March 24, 2008, by Lazer Licenses, LLC, (“Lazer”), the licensee of stations KSBQ(AM), Santa Maria, California, KLMM-FM, Morro Bay, California and KLUN-FM, Paso Robles, California, of a *Forfeiture Order*³ issued by the Western Region (“Region”) of the Enforcement Bureau, imposing an eight thousand dollar (\$8,000) forfeiture against Lazer, for willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”).⁴ The noted violation concerned Lazer’s failure to maintain complete public inspection files for KSBQ(AM), KLMM-FM, and KLUN-FM. For the reasons discussed below, we deny Lazer’s *Petition* and affirm the forfeiture.

II. BACKGROUND

2. On March 6, 2007, an agent of the Enforcement Bureau’s Los Angeles Office conducted inspections of the public inspection files for stations KSBQ(AM), KLMM-FM and KLUN-FM at their main studio location in Santa Maria, California. The agent discovered that while the public inspection

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ *Lazer Licenses, LLC*, 23 FCC Rcd 2589 (EB 2008) (“*Forfeiture Order*”).

⁴ 47 C.F.R. § 73.3526.

files were partially complete, there were no issues/programs lists maintained in the public inspection files for any of the three stations subsequent to their license renewal on July 28, 2005. The general manager for the three stations stated that he was fairly new but very familiar with the issues/programs filing requirements and advised the agent that from the date of inspection forward, he was putting his Office Manager in charge of maintaining and filing these records in the public inspection files. He could not explain why these records for all three stations had not been maintained in the public inspection files subsequent to the stations' license renewal on July 28, 2005.

3. On May 17, 2007, the Los Angeles Office issued a Notice of Apparent Liability for Forfeiture ("NAL")⁵ in the amount of \$12,000 to Lazer, finding that Lazer apparently willfully and repeatedly failed to maintain complete public inspection files for KSBQ(AM), KLMM-FM and KLUN-FM. Lazer filed a response ("Response") on June 25, 2007,⁶ arguing that the missing issues/programs lists were timely prepared and were on a different floor of the main studio location but could not be located because of recent staff changes, and that Lazer has since modified its procedures concerning public inspection files for all of its stations. In the *Forfeiture Order*, the Region reviewed Lazer's *Response* and accepted Lazer's explanation concerning the placement of the issues/programs lists.⁷ Consequently, the Region reduced the proposed forfeiture from \$12,000 to \$8,000 because of Lazer's good faith efforts; however, the Region declined to cancel the forfeiture because the issue/programs lists were not available for inspection by either the Los Angeles agent or the public, on the day of the inspection.⁸ The Region also declined to reduce the forfeiture based on the remedial procedures implemented by Lazer.⁹

III. DISCUSSION

4. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.¹⁰ A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.¹¹ In its *Petition*, Lazer requests that the forfeiture be eliminated or reduced because of Lazer's good faith and because the forfeiture "is excessive in light of similar fines issues by the Commission"¹²

5. Lazer argues that the issues/programs lists were being properly maintained for the three stations, but were located in a different area of the main studio. Lazer cites to the Commission's decision in *Citadel Broadcasting Company, Inc.*,¹³ and argues that in that case the Commission "established a

⁵ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900007 (Enf. Bur., Western Region, Los Angeles Office, released May 17, 2007).

⁶ Lazer requested, and received, an extension of time to file its *Response*.

⁷ *Forfeiture Order*, 23 FCC Rcd at 2590 - 2591.

⁸ *Forfeiture Order*, 23 FCC Rcd at 2591.

⁹ *Forfeiture Order*, 23 FCC Rcd at 2591.

¹⁰ See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257, (EB 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

¹¹ *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

¹² *Petition* at 1.

¹³ 22 FCC Rcd 7083 (2007) ("*Citadel*").

\$1,000 forfeiture amount for issues/programs lists oversights”¹⁴ because the Commission issued a forfeiture for \$1,000 against *Citadel* for the violation of two missing issues/programs lists which could not be recreated. In *Citadel*, the licensee admitted in its license renewal application for WLXC(FM), serving Lexington, South Carolina, that its public file was incomplete and the Commission determined because the station was missing two issue/programs lists, the appropriate forfeiture amount was \$1,000. At the time of the inspection, Lazer was not merely missing two issues/programs list for only two quarters. The public files for the three Lazer stations did not have any issues/programs lists available since the most recent renewal grants for the stations on July 28, 2005. Consequently, Lazer was missing six quarters of issues/programs lists for each station, for a total of eighteen missing issues/programs lists.¹⁵ The amount of the forfeiture is therefore supported by the *Citadel* case in which another *Citadel* station, WWVZ(FM), serving Summerville, South Carolina, admitted on its renewal application that its public inspection file was missing a total of fifteen issues/programs lists. In *Citadel*, the Commission determined that WWVZ(FM) was apparently liable for a \$10,000 forfeiture for its self-reported missing issues/programs lists.¹⁶

6. Lazer also cites to a decision by the Commission’s Media Bureau in which a \$1,000 proposed forfeiture for public inspection file violations was issued rather than the base forfeiture amount of \$10,000. In the cited case, *Creek Broadcasting*,¹⁷ a former employee, against whom Creek Broadcasting was granted a restraining order, filed a complaint against Creek Broadcasting stating, among other things, that numerous items were missing from the KTMP(AM) public inspection file. The Media Bureau found that Creek Broadcasting did not adequately rebut the former employee’s allegations, by stating that “the required items were prepared and placed in the file, but were subsequently removed from the file by [the employee] upon his less-than-amicable departure from the station.”¹⁸ The Media Bureau did give weight to Creek Broadcasting’s statement that there was a time that the public inspection file was deficient due to the acts of a former employee, and proposed a \$1,000 forfeiture. In the present case, Lazer does not allege that the deficiencies in its public inspection file were caused by persons outside of its control; consequently, we find that *Creek Broadcasting* is not dispositive.

7. Lazer further argues that in another case, *Trustees of Davidson College*,¹⁹ the Media Bureau reduced a proposed \$10,000 forfeiture to \$1,000 after Davidson College determined that three years of issues/programs lists were missing for only eight months, rather than three years as originally stated on the Davidson College renewal application for noncommercial education station WDAV(FM), Davidson, North Carolina, even though the files were misplaced and could not be located or reconstructed.²⁰ Lazer argues that it is in a “better situation” than Davidson College as it was ultimately able to produce the missing lists which were “simply in a different part of the main studio during the inspection.”²¹ We disagree. We first note that the missing quarterly issues/programs lists in *Trustees of Davidson College* were five years old or more at the time of the filing of the renewal application, as opposed to the issues/programs lists missing from the Lazer stations, which were all of the quarterly

¹⁴ *Petition* at 3.

¹⁵ In its *Response* to the *NAL*, Lazer produced the missing issue/programs lists.

¹⁶ *Citadel*, 22 FCC Rcd at 7103.

¹⁷ *Creek Broadcasting Corporation*, 22 FCC Rcd 18669 (MB 2007) (“*Creek Broadcasting*”).

¹⁸ *Creek Broadcasting*, 22 FCC Rcd at 18672.

¹⁹ *Trustees of Davidson College*, 20 FCC Rcd 17190 (MB 2005) (“*Trustees of Davidson College*”).

²⁰ See File No. BRED-20030801ANK, granted June 21, 2004.

²¹ *Petition* at 4.

issues/programs lists required since the grant of the most recent renewals for the Lazer stations in 2005. More significantly, the Los Angeles agent inspected the Lazer stations' main studio on March 6, 2007, and after conversations with Lazer staff, determined that all of the stations' required quarterly issues/programs list were missing. According to Lazer's *Response* to the NAL, Lazer did not attempt to locate the stations' missing issues and programs lists until May 30, 2007, after the NAL was issued, when an administrative assistant for Lazer visited the main studio location and "located all of the issues and programs lists for all three stations."²² Lazer also stated in its *Response* that the "lists have been relocated to the first floor of our studio and are associated with the other items in our public files."²³ In other words, almost three months passed after the Los Angeles Office inspection before Lazer located the missing issues and programs lists and associated them with rest of the stations' public inspection files. We also note that this effort was taken apparently only in response to the NAL. In *Trustees of Davidson College*, the violation was reported by the licensee, as part of the renewal process. In the present case, Lazer was notified of the violation by the Commission staff, and continued to fail to make any effort to rectify the violation until a monetary forfeiture was proposed. As the Commission has stated in the past, a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.²⁴

8. Lazer also argues that it was not intentionally trying to deny access to its public files nor was it negligent in providing such access. To support this argument, Lazer cites to *Citicasters*²⁵ in which the Commission's Media Bureau determined that a wait of one hour to see the public inspection file was not unreasonable as the delay was caused by "legitimate security procedures."²⁶ While the Region did not find that Lazer intentionally denied access to the public inspection file, the delay that Lazer caused by failing to produce the missing issues/programs lists lasted far greater than one hour; according to the Lazer *NAL Response*, it lasted until May 30, 2007, almost three months after the violation. Therefore, we find no relevance to this argument.

9. We have considered the arguments raised by the Lazer in its *Petition* and find they are unpersuasive. Therefore, we deny the Lazer's *Petition*, and affirm the Region's *Forfeiture Order* finding Lazer liable for a forfeiture in the amount of \$8,000.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,²⁷ and Section 1.106 of the Commission's Rules,²⁸ Lazer Licensees, LLC's *Petition for Reconsideration*, filed March 24, 2008, **IS DENIED**, and the Region's *Forfeiture Order* **IS AFFIRMED**.

11. Payment of the forfeitures ordered by the Region and affirmed by this *Memorandum Opinion and Order* shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be

²² *Response* at 1.

²³ *Response* at 1.

²⁴ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

²⁵ *Citicasters Licenses, L.P.*, 22 FCC Rcd 19324 (MB 2007) ("*Citicasters*").

²⁶ *Citicasters*, 22 FCC Rcd at 19334.

²⁷ 47 U.S.C. § 405.

²⁸ 47 C.F.R. § 1.106.

referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

12. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Lazer Licenses, LLC, at its address of record, and Harry C. Martin, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Deputy Chief, Enforcement Bureau

²⁹ 47 U.S.C. § 504(a).